IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 2158 of 2005()

AGAINST THE JUDGEMENT/ORDER IN CRLP.589/2005 Dated 22/11/2005
CC.20/2002 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

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APPELLANT: COMPLAINANT

M/S.SITARAM AYURVEDA PHARMACY LTD.,
REGISTERED OFFICCE AT XXV/397,
ROUND SOUTH THRISSUR-1, REPRESENTED BY POWER OF
ATTORNEY HOLDER UNNIKRISHNAN K.N.,
KURUSSAROOR MANA, THAIKKATTUSSERY, EDAKUNNI
VILLAGE, THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

RESPONDENTS: ACCUSED & STATE

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1. N.T.ABDULLA, S/O.LATE AHAMED KOYA,
THANATH HOUSE, MANGAVU P.O.,
KOZHIKODE DISTRICT.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY ADV. SRI.RATHEESH.P.R.
SRI.NIJOE MATHILUNKAL JOSEPH
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 2158 of 2005

Dated this the 7th March, 2007.

J U D G M E N T

The complainant whose complaint under Section 138 of the Negotiable Instruments Act was dismissed by the court below, is before this Court, through this appeal, challenging the dismissal, after obtaining leave of this Court. The reason for dismissal was the absence of the complainant as well as his counsel.

2. The learned counsel appearing for the appellant submits that the clerk of the advocate had noted the posting date wrongly, and, therefore, there was no appearance, when the case was taken up before the court below. There is no affidavit produced in order to substantiate the argument.

3. In order to prevent injustice to the party, because of the lapse of the clerk or advocate, as the case may be, I am of the opinion that an opportunity be given to both sides to raise their contentions, and dispose of the matter, on merit.

4. In the result, the appeal is allowed. The impugned order, dated 29.7.2005, is set aside. C.C.No.20/2002 is restored to the file of the Judicial First Class Magistrate Court-III, Thrissur.

5. The parties shall appear before the court below on 9.4.2007.

6. The learned Magistrate shall dispose of the matter, within four months, from the date of appearance of the parties before that court.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.